

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT**

**SHAWN PONTBRIAND,  
Petitioner**

**v.**

**ROBERT D. HOFMANN,  
COMMISSIONER, VERMONT  
DEPARTMENT OF CORRECTIONS,  
Respondent**

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**File No. 1:06-CV-23**

**ORDER**

The Magistrate Judge's Report and Recommendation was August 9, 2006 (Paper 9). After de novo review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1). The respondent's motion to dismiss (Paper 7) is GRANTED. The petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DISMISSED without prejudice.

Pursuant to Fed. R. App. P. 22(b), the Court DENIES petitioner a certificate of appealability ("COA") because the petitioner failed to make a substantial showing of a denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). In addition, because the petition has been dismissed on procedural grounds, the petitioner cannot be issued a COA due to her failure to demonstrate that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the

district court was correct in its procedural ruling.” See Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 1604 (2000).

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 24<sup>th</sup> day of August, 2006.

/s/ J. Garvan Murtha

J. Garvan Murtha  
United States District Judge